

## **Title 210 - NEBRASKA DEPARTMENT OF INSURANCE**

### **Chapter 56 - ANNUAL AUDITED FINANCIAL REPORTS**

001. Authority. This Rule is promulgated by the Director of Insurance pursuant to Neb.Rev.Stat. §44-101.01, §44-322, §44-1097, §44-1207, and §44-32,162.

002. Purpose.

002.01 The purpose of this Rule is to improve the Nebraska Insurance Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers.

002.02 This Rule shall apply to all insurers as defined in Section 003.05 except that the following insurers shall be exempt from this Rule for such year unless the Director makes a specific finding that compliance is necessary for the Director to carry out statutory responsibilities:

002.02(a) Assessment associations subject to Neb.Rev.Stat. §44-801 et seq.; and

002.02(b) Foreign or alien insurers having direct premiums written of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be exempt.

002.03 Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which has been found by the Director to be substantially similar to the requirements herein, are exempt from this Rule if:

002.03(a) A copy of the Audited Financial Report on ~~Signature~~ Significant Deficiencies in Internal Controls, and the Accountants' Letter of Qualifications which are filed with such other state are filed with the Director in accordance with the filing dates specified in Sections 004 and 010 and 012, respectively. Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance.

002.03(b) A copy of any notification of adverse financial condition report filed with such other state is filed with the Director as required by Section 010.

002.04 This Rule shall not prohibit, preclude or in any way limit the Director of Insurance from ordering, conducting or performing examinations of insurers under the Statutes and the Rules and Regulations of the Nebraska Department of Insurance and the practices and procedures of the Nebraska Department of Insurance.

### 003. Definitions.

003.01 "Audited financial report" means and includes those items specified in Section 005 of this Rule.

003.02 "Accountant" and "Independent Public Accountant" mean an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant. For purposes of this Rule, "independent" means not affiliated with an insurer.

003.03 "Department" means the Nebraska Department of Insurance.

003.04 "Director" means the Director of Insurance for the State of Nebraska.

003.05 "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

003.056 "Insurer" means any stock insurance company, mutual insurance company, assessment company, reciprocal insurance company, fraternal

benefit society or health maintenance organization holding a certificate of authority or license issued by the Department. Application of this Rule is further qualified in Subsection 002.02 with regard to assessment companies.

003.067 "NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual" means the current editions of the Annual Statement Instructions and Accounting Practice and Procedures Manuals adopted by the National Association of Insurance Commissioners in effect on the effective date of this chapter. The NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual are available for public inspection at the offices of the Nebraska Department of Insurance, located at 941 "O" Street, Suite 400, Lincoln, Nebraska 68508.

003.078 "Statutory accounting practices" has the meaning defined in the current editions of the Annual Statement Instructions and Accounting Practice and Procedures Manuals published by the National Association of Insurance Commissioners, or as otherwise prescribed by the insurance department of the insurer's state of domicile.

004. Filing and extensions for filing of annual audited financial reports. All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Director on or before June 1 for the year ended December 31 immediately preceding. The Director may require an insurer to file an audited financial report earlier than June 1 with ninety days advance notice to the insurer. Extensions of the June 1 filing date may be granted by the Director for thirty day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Director of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the Director to make an informed decision with respect to the requested extension.

005. Contents of annual audited financial report. The Annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the State of domicile. The annual audited financial report shall include the following:

005.01 Report of independent certified public accountant.

005.02 Balance sheet reporting admitted assets, liabilities, capital and surplus.

005.03 Statement of operations.

005.04 Statement of c€ash flows.

005.05 Statement of changes in capital and surplus.

005.06 Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Neb.Rev.Stat. §44-322 with a written description of the nature of these differences.

005.07 The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Director, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

006. Designation of independent certified public accountant.

006.01 Each insurer required by this Rule to file an annual audited financial report must within sixty days after becoming subject to such requirement, register with the Director in writing the name and address of the independent certified public accountant or accounting firm, generally referred to in this Rule as the "accountant," retained to conduct the annual audit set forth in this Rule. Insurers not retaining an independent certified public accountant on the effective date of this Rule shall register the name and address of their retained certified public accountant not less than six months before the date when the first audited financial report is to be filed.

006.02 The insurer shall obtain a letter from such accountant, and file a copy with the Director stating that the accountant is aware of the provisions of the insurance statutes and the Rules and Regulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that he or she will express his or her opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Department, specifying such exceptions as he or she may believe appropriate.

006.03 If an accountant who was ~~not~~ the accountant for the immediately preceding filed audited financial Report is dismissed or resigns, the insurer shall notify the Department of this event within five business days of this

event. The insurer shall also furnish the Director with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding such engagement event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Director together with its own.

007. Qualifications of independent certified public accountant.

007.01 The Director shall not recognize any person or firm as a qualified independent certified public accountant ~~that~~ if the person or firm:

007.01(a) ~~is~~ not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

007.01(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.

007.02 Except as otherwise provided herein, the Director shall recognize an independent certified public accountant ~~shall be recognized~~ as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Nebraska Board of Public Accountancy, or similar code.

007.03 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved

by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under the Insurers Supervision, Rehabilitation, and Liquidation Act, Neb. Rev. Stat. §44-4801 et seq., the mediation or arbitration provisions shall operate at the option of the statutory successor.

007.034 No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Director for relief from the above rotation requirement on the basis of unusual circumstances. The Director may consider the following factors in determining if the relief should be granted:

007.034(a) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

007.034(b) Premium volume of the insurer; or

007.034(c) Number of jurisdictions in which the insurer transacts business.

The requirements of this paragraph shall become effective two years after the enactment of this rule.

007.045 The Director shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

007.045(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

007.045(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

007.045(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Rule.

007.056 The Director of Insurance, may hold a hearing in accordance with the provisions of the Nebraska Administrative Procedure Act,

Neb.Rev.Stat. §84-901 et seq. and Title 210, Nebraska Administrative Code, Chapter 26, to determine whether a certified public accountant is qualified and independent and, considering the evidence presented, may rule that the accountant qualified and is not independent for purposes of expressing his opinion of the financial statements in the Annual Audited Financial Report made pursuant to this Rule and require the insurer to replace the accountant with another whose relationship with the insurer is independent within the meaning of this Rule.

008. Consolidated or combined audits. An insurer may make written application to the Director for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

008.01 Amounts shown on the consolidated or combined Audited Financial Report shall be shown on the worksheet.

008.02 Amounts for each insurer subject to this section shall be stated separately.

008.03 Noninsurance operations may be shown on the worksheet on a combined or individual basis.

008.04 Explanations of consolidating and eliminating entries shall be included.

008.05 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the Annual Statements of the insurers.

009. Scope of examination and report of independent certified public accountant. Financial statements furnished pursuant to Section 005 hereof shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and ~~and. Consideration shall should also be given to the such other~~ procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

010. Notification of adverse financial condition.

010.01 The insurer required to furnish the Annual Audited Financial Report shall require the independent certified public accountant to report

in writing, within five business days to the board of directors or its audit committee, any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Director as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the Nebraska insurance statutes as of that date. An insurer who has received a report pursuant to this paragraph shall forward a copy of the report to the Director within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Director. If the independent certified public accountant fails to receive such evidence within the required five business day period, the independent certified public accountant shall furnish to the Director a copy of its report within the next five business days.

010.02 No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with the above paragraph.

010.03 If the accountant, subsequent to the date of this audited financial report filed pursuant to this Rule, becomes aware of facts which might have affected his report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants; as amended.

011. Report on significant deficiencies in internal controls. In addition to the annual audited financial statements, each insurer shall furnish the Director with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within sixty days after the filing of the annual audited financial statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

012. Accountant's letter of qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:



012.01 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Accountants and the Rules of Professional Conduct of the Nebraska Board of Public Accountancy, or similar code.

012.02 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Rule shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

012.03 That the accountant understands the annual financial report and his opinion thereon will be filed in compliance with this Rule and that the Director will be relying on this information in the monitoring and regulation of the financial position of insurers.

012.04 That the accountant consents to the requirements of Section 013 of this Rule and that the accountant consents and agrees to make available for review by the Director, his designee or his appointed agent, the workpapers, as defined in Section 013.

012.05 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

012.06 A representation that the account is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

012.07 A representation that the accountant is in compliance with the requirements of Section 007 of this Rule.

### 013. Definition, availability and maintenance of CPA workpapers.

013.01 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his examination of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified accountant in the course of his or her examination of the financial statements of an insurer and which support the accountant's opinion ~~his opinion~~ thereof.

013.02 Every insurer required to file an audited financial report to this Rule, shall require the accountant, to make available for review by Department examiners, all workpapers prepared in the conduct of the accountant's ~~his~~ examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department or at any other reasonable place designated by the Director. The insurer shall require that the accountant retain the audit workpapers and communications until the Department has filed a report of ~~E~~examination covering the period of the audit but no longer than seven years from the date of the audit report.

013.03 In the conduct of the aforementioned periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Department. Such reviews by the Department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.

014. Exemptions. Upon written application of any insurer, the Director may grant an exemption from compliance with this Rule if the Director finds, upon review of the application, that compliance with this Rule would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this Rule, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the Nebraska Administrative Procedure Act, Neb.Rev.Stat. §84-901 et seq. and Title 210, Nebraska Administrative Code, Chapter 26.

015. Effective dates.

015.01 Domestic insurers retaining a certified public accountant on the effective date of this Rule who qualify as independent shall comply with this Rule for the year ending December 31, ~~1991~~ 2004 and each year thereafter unless the Director permits otherwise.

015.02 Domestic insurers not retaining a certified public accountant on the effective date of this Rule who qualify as independent shall file all reports required by this Rule on December 31, 2004 and each year thereafter ~~may meet the following schedule for compliance~~ unless the Director permits otherwise.

015.02(a) ~~As of December 31, 1991, file with the Director:~~

015.02(a)(1) ~~Report of independent certified public accountant.~~

~~015.02(a)(2) Audited balance sheet.~~

~~015.03(a)(3) Notes to audited balance sheet.~~

~~015.02(b) For the year ending December 31, 1992, and each year thereafter, such insurers shall file with the Director all reports required by this Rule.~~

015.03 Foreign insurers shall comply with this Rule for the year ending December 31, ~~1994~~ 2004, and each year thereafter, unless the Director permits otherwise.

016. Canadian and British companies.

016.01 In the case of Canadian and British insurers, the Annual Audited Financial Report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant.

016.02 For such insurers, the letter required in Section 006 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Director pursuant to Section 004 and shall affirm that the opinion expressed is in conformity with such requirements.

017. Severability provision. If any Section or portion of a Section of this Rule or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of such provision to other persons or circumstances shall not be affected thereby.